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**August 11, 2011**

**Submitted electronically**

Mary Nichols  
Chairperson  
California Air Resources Board  
1001 "T" Street  
Sacramento, CA 95812

**Re: 15-day Proposed Regulation Changes to Cap and Trade and Monitoring and Reporting Rule**

Dear Chairperson Nichols:

United Air Lines, Inc. (herein referred to as United or United Airlines) is pleased to have this opportunity to provide the following comments on both the 15-Day Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (Cap and Trade) issued July 25, 2011 and the 15-Day Proposed Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (Monitoring and Reporting Rule) also issued July 25, 2011.

**Mandatory Reporting Rule**

**1. Pilot Light Emissions – Section 95115 (i)**

The proposed changes to the regulation include a revision that would include pilot light emissions in the annual reporting, even where such pilot lights are only on for brief moments. This is a departure from the federal reporting requirements and it is unclear why such departure is necessary, particularly when there has been recognition by ARB of the importance of harmonizing with the U.S. EPA Mandatory Reporting of Greenhouse Gases (U.S. EPA MRR) and the Board's direction in Resolution 10-43 seeking such harmonization. In regard to United's operations at our cogeneration facility located in San Francisco, our pilot lights are only on very briefly prior to the start-up of our boilers and duct burner (for seconds or perhaps up to a minute). The burden of inclusion of such pilot light emissions significantly outweighs the benefit of its inclusion. Therefore, we

request that an exemption be added to Section 95115 (i) that provides an exemption for non-continuous pilot light operations.

## 2. Measurement Accuracy Requirements – Section 95103

As discussed above, there has been a significant effort to harmonize the reporting requirements within the Monitoring and Reporting Rule with the U.S. EPA MRR with Section 95103 noting that facilities are to monitor and report their emissions in accordance with the requirements in 40 CFR 98.3 and 98.4 except as provided in Section 95103. We observed that with regard to the “Measurement and Accuracy Requirement” in 95103(k) that there were numerous additional requirements being sought by ARB that create additional burdens beyond what is required in the U.S. EPA MRR. In particular we note the following more burdensome requirements and we would ask that the ARB reconsider whether these additional requirements beyond the U.S. EPA MRR requirements are warranted:

- Section 95103(k)(4) requires the operator to conduct recalibrations using the procedure having the shortest frequency regardless of the manufacturer’s recommendation.
- Section 95103(k)(5) states all standards used for calibration must be traceable to the National Institute of Standards and Technology.
- Section 95103(k)(6)(A) requires orifice plates to be inspected in accordance with 94103(k)(4), must be conducted in accordance with ISO 5167-2 (2003) section 5, and must be photographed on both sides prior to any treatment or cleanup of the plates.

## 3. Definition of Distillate Fuel No 1 – Section 95102 (107)

We noted that the definition of Distillate Fuel Oil #1 has been added to the Monitoring and Reporting Rule and that there have been additional uses of the term in both the Monitoring and Reporting Rule and the Cap and Trade. In looking at this definition in the context of the various other definitions and the provisions in the two rules, we understand that this term does not include jet fuel. However, because Distillate Fuel Oil #1 is defined with reference to the maximum distillation temperature (and the potential for jet fuel to fall into the range noted), we think it would be a helpful clarification to note that this definition excludes jet fuel. We saw such clarification was included for kerosene and we are seeking a similar edit. The edit sought would look at follows:

Section 95102 (107) “Distillate Fuel No. 1” has a maximum distillation temperature of 550 F at the 90 percent recovery point and a minimum flash point of 100 F and includes fuels commonly known as Diesel Fuel No. 1 and Fuel Oil No. 1, but excludes kerosene and kerosene-type jet fuel. This fuel is further subdivided into categories of sulfur content: High Sulfur (greater than 500 ppm), Low Sulfur (less than or equal to 500 ppm and greater than 15 ppm), and Ultra Low Sulfur (less than or equal to 15 ppm).

#### 4. Enforcement – Section 95017

We have two suggested changes to Section 95017. First, section 95107(b) has been revised to state that each ton of CO<sub>2</sub>e that is under-reported is its own violation. We believe such a provision is unnecessary considering that such under-reporting would result in not obtaining sufficient allowances and hence fall under the enforcement provisions of the Cap and Trade regulation. In addition, there is already a provision in Section 95107(a) which provides that there is a violation if the annual report were to be inaccurate.

Secondly, we note that Section 95107(c) states that each failure to measure, collect, record or preserve information required by this article for the calculation of emissions constitutes a separate violation of this article. We believe it would more accurately reflect the intention of this section if it were to be revised to state “each type of failure to measure, collect, record or preserve...” would constitute a separate violation.

### Cap and Trade

#### 1. Natural Gas – Potential for Double Regulation – Section 95852

We have concern that the structure of the regulation provides no protection against suppliers of natural gas including a cost for allowances within the price they seek for natural gas even though covered entities will have to ensure they have allowances that cover emissions associated with their combustion of natural gas.

Section 95852 provides that suppliers of RBOB, distillate fuel oils, natural gas liquids, and blended fuels are required to account for allowances for combustion of these fuels by their downstream users and there is not a concern regarding double-regulation since the downstream users are not required to account for such allowances. In contrast, while natural gas suppliers are required to hold allowances that represent the natural gas that is used by downstream users who do not fall under the scheme, they are not required to hold allowances for entities that fall under the scheme (covered entities) since those covered entities will be required to hold such allowances. Our concern is that there will be (at best) confusion over this issue and (at worst) manipulation of this issue such that downstream users of natural gas who are covered entities will face both prices of natural gas that includes the cost for allowances (even though the provider does not have to obtain such allowances) while the covered entity must still obtain the allowances itself.

We note that ARB added language at Section 95852(c)(3) such that ARB will provide to the natural gas suppliers a list of all their customers that are covered entities - including information on the aggregate natural gas volumes and emissions calculated from the supplier's natural gas delivered to the covered entity. This is a helpful addition in that it may help natural gas providers to understand which of their downstream users already have to pay for their allowances; however, it doesn't provide any mechanism for avoiding (or addressing) the situation in which the natural gas provider still embeds the cost of allowances into the sale price for the covered entity (resulting in double-payment).



We are seeking that ARB consider incorporation of a mechanism to address this concern. This could include a requirement of transparency on the part of the natural gas provider along with a mechanism to discount the amount of allowances the downstream user is required to obtain in order to avoid a double payment.

2. Disposition of Allowances – Table 8-1

Table 8-1 discusses the disposition of allowances for various industries that meet specific criteria under the Cap and Trade regulations. We understand that ARB is continuing to review where industries are placed on Table 8-1. We intend to seek further dialogue with ARB regarding the appropriate placement of our industry, in accordance with the applicable criteria.

3. Definition of Distillate Fuel No 1 – Section 95802 (71)

The same change to the definition to Distillate fuel No 1 as discussed above in the Monitoring and Reporting Rule should also be made in the Cap and Trade regulation.

4. Certification Requirement – Section 95832

Sections 95832 (a)(6) and (d) provide certification requirements for submittals to ARB. We noticed the deletion of the phrase “to the best of my knowledge” and we believe it is appropriate to include this language as consistent with the certification requirements under the Monitoring and Reporting Rule and the EPA MRR.

5. Enforcement requirements – Sections 95857, 95858, & 96014(c)

We seek the following edits for the provisions that discuss enforcement.

Sections 95857 and 95858:

These sections discuss the enforcement provisions associated with the “Untimely Surrender of Compliance Instruments” and “Compliance Obligations for Under-Reporting”. The relationship between these two provisions isn’t well articulated in the regulation. In addition, it appears that these provisions, along with the enforcement provisions under the Monitoring and Reporting Rule Section 95107(b) could result in double enforcement (as discussed above).

Another concern is that while Section 95858 provides for a notification from ARB when there has been under-reporting, there doesn’t appear to be the same notification in Section 95957. This is particularly of concern since Section 95857(b)(1) appears to provide a short window to obtain the necessary additional allowances before a penalty of four (4) times the missing allowances is required.

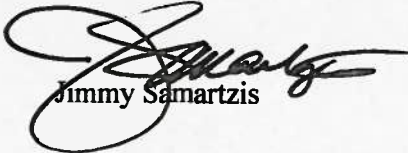
Section 96014(c):

This section added a new enforcement provision to the Cap and Trade regulations to identify violations of a more egregious nature. However, it would be best to clarify this section by adding the word “knowingly” in the lead sentence such that it reads: “(c) It is a violation to submit any record, information or report required by this article that knowingly...”

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We appreciate the opportunity to provide these comments and look forward to working with ARB staff regarding these comments. Should you have any questions about these comments you may contact Suzanne Tedrow at (872) 825-8756 or Angela Foster-Rice at (312) 997-8235.

Sincerely,



Jimmy Samartzis

Cc: Suzanne Tedrow  
Angela Foster-Rice  
Robert Madigan

